

**OPINION  
49-164**

March 22, 1949            (OPINION)

PUBLIC LIBRARY AND CEMETERY

RE:    Funds

Re: Chapter 40-38 R.C. 1943 and Chapter 312 S.L. 1945.

Your letter of March 19, with questions relative to your public library fund and cemetery fund, has been received and referred to my desk.

The law authorizing the public library is chapter 40-38 of the Revised Code. There is an amendment to this chapter found in chapter 260 of the Laws of 1945. The public library which you refer to evidently is the county library established by the county commissioners. Something over a year ago, we wrote with reference to a county library as follows:

We agree entirely with the opinion of your city attorney. Under this chapter, the board of directors provided by section 40-3804 has power to 'control exclusively the expenditure of all monies collected for or contributed to the library fund.'

Clearly, under this provision the board of county commissioners has no authority whatsoever over the expenditure of this fund. Therefore, the county treasurer should make payments as directed by the board of directors. The bills for these expenditures are not audited in any manner whatsoever by the board of county commissioners."

It would seem to us that the fund created for the county library should remain in the county treasury but in a separate fund and should be paid out on orders of the library board without any interference or O.K. by the county board.

It seems to us that the statutes of the state relative to municipally owned and controlled cemeteries are very vague. Section 40-0501 (46) provides that municipalities may establish and maintain cemeteries. However, the statute makes absolutely no provision as to the method of handling, controlling, and maintaining a cemetery. It is our opinion that chapter 10-10 of the Revised Code, providing for the organization of cemetery corporations, should be followed as far as it is applicable.

Section 409-0101, defining municipalities, does not include townships. Therefore, there is no direct authority for a township to own and maintain a cemetery. The legislature in 1945 evidently believed that townships as well as other municipalities had a right to maintain a cemetery, for by chapter 312 of the Laws of 1945 they authorized townships, villages, and cities to levy a tax not to exceed two mills on the dollar in addition to all levies now authorized by law "for the purpose and to be used exclusively for the care, maintenance, and improvement of established cemeteries owned

and maintained by such organized townships, villages or cities. It may be assumed from this authorization of a tax levy that a town has a right to maintain a cemetery, but the law makes absolutely no provision for the machinery of the care and maintenance of such cemetery.

I infer from your letter that the city of Mohall has established a cemetery under the authorization of section 40-0501 (46). Since the law referred to above makes no specific provision for maintenance of cemeteries, it is our opinion that townships, if they see fit, may combine with a city or village owning and maintaining a cemetery in such maintenance, by making the levy authorized by chapter 312. Since the statute is absolutely silent as to the mechanism of disbursing the levy, it is our opinion that the city may by ordinance provide for the disbursement by transferring to the cemetery board the sole power of disbursing the fund. The fund, however, would remain in the city treasury and would be disbursed on orders from the cemetery board by the city treasurer. I am further of the opinion that the townships making the levy permitted by chapter 312 of the Laws of 1945 may pay over the levy so made to the city treasurer, who should deposit the same in the special fund created by the several levies for cemetery purposes.

Since the law - chapter 312 of the Laws of 1945 - does not provide for a continuing levy, it is our opinion that the city and each township involved should make such levy as it desires each year. Of course the levy must not exceed two mills as provided by this chapter.

WALLACE E. WARNER

Attorney General